



THE ATTORNEY GENERAL  
OF TEXAS

May 16, 1990

JIM MATTOX  
ATTORNEY GENERAL

Ms. Jo King McCrorey  
Executive Director  
State Board of Barber  
Examiners  
9101 Burnet Road, Suite 103  
Austin, Texas 78758

LO-90-26

Dear Ms. McCrorey:

You ask about the effect of article 8407a, V.T.C.S., as amended by House Bill 1558, Acts 1989, 71st Leg., ch. 1159, § 8, eff. Sept. 1, 1989, on Letter Opinion 88-96 (1988).

Article 8407a makes it unlawful for any person to engage in the practice of barbering "without a certificate or registration as a registered barber issued pursuant to the provisions of this Act, by the Board of Barber Examiners." Section 3 requires any person who owns, operates, or manages a barber shop to have a barber shop permit issued by the State Board of Barber Examiners. Section 28 provides that subject only to the authority of the State Board of Health to promulgate regulations as to sanitation, the board shall have authority to make and enforce all rules and regulations to regulate the practice and teaching of barbering.

Letter Opinion 88-96 concluded that privately owned correctional facilities are required to have barber shop permits; persons performing barbering services at private correctional facilities are required to be licensed under article 8407a; and that places where barbering services are performed at private correctional facilities are "barber shops" within the meaning of article 8407a and come under the jurisdiction of the board to regulate and enforce standards of sterilization and sanitation.

Section 6 of article 8407a addresses the matter of persons exempt from the provisions of the act, and as amended by House Bill 1558, provides:

The following persons shall be exempt from the provisions of this Act, provided such persons are not represented, advertised, or held out to the public, directly or indirectly, or in any manner whatsoever, as barbers, journeymen barbers, barber technicians, or under any name, title, or designation indicating such person is authorized to practice by authority of any license or permit issued by the board:

(1) a doctor of medicine, doctor of osteopathic medicine, or registered nurse licensed and regulated by the State of Texas while operating within the scope of that person's license;

(2) commissioned or authorized medical or surgical officers of the United States Army, Navy, or Marine Hospital Service;

(3) persons licensed or practicing by authority of the Texas Cosmetology Commission under the provisions of Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), so long as such persons practice within the scope of the license or permit duly issued by the Texas Cosmetology Commission; or

(4) an inmate incarcerated in the Texas Department of Corrections who performs barbering during the period of incarceration. (Emphasis reflects portion added by amendment.)

The amendment by House Bill 1558 exempting inmates who perform barbering during the period of incarceration from the provisions of article 8407a appears to be in response to Letter Opinion 88-96 as reflected by the Bill Analysis to House Bill 1558, providing:

#### BACKGROUND

Currently, the Texas Department of Corrections uses inmates to perform barber services on other inmates while incarcerated. A recent Attorney General Opinion states that

the Department could be subject to the licensing requirements of the Texas Board of Barber Examiners and/or the Cosmetology Board. It is virtually impossible for the Department to license these inmates. The alternative would be to contract with free-world, licensed barbers which would result in considerable expense to the state.

PURPOSE

H.B. 1558 would allow an inmate to act as a barber while incarcerated.

Section 494.001 of the Government Code authorizes the Texas Board of Corrections to contract with a private vendor for the operation of a correctional facility. Section 494.022 of the Government Code provides "an inmate confined in a facility authorized by this subchapter remains in the legal custody of the department."

Section 6 of article 8407a as amended by the 71st Legislature exempts inmates incarcerated in the Texas Department of Corrections who perform barbering during the period of incarceration "from the provisions of this Act." Therefore, our conclusion in Letter Opinion 88-96 is no longer applicable.

Very truly yours,



Rick Gilpin, Chairman  
Opinion Committee



Sarah Woelk, Chief  
Letter Opinion Section

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APPROVED: OPINION COMMITTEE

SW/RG/TGD/mc

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